

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 24, 2016

CASE NO(S): PL130350

PROCEEDING COMMENCED UNDER subsection 17(24) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant: 1077022 Ontario Inc. et al
Appellant: Baif Developments Limited
Appellant: Jason Properties Inc.; and others
Subject: Proposed Official Plan Amendment No. OPA 8
Municipality: City of Mississauga
OMB Case No.: PL130350
OMB File No.: PL130350
OMB Case Name: A & W Food Services of Canada Inc. v. Mississauga (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant: 1077022 Ontario Inc. et al
Appellant: Baif Developments Limited
Appellant: Jason Properties Inc.; and others
Subject: By-law No. 0050-2013
Municipality: City of Mississauga
OMB Case No.: PL130350
OMB File No.: PL130351

Heard: July 27, 2016 in Mississauga, Ontario

APPEARANCES:

Parties

City of Mississauga

Baif Developments Inc. and
Wal-Mart Canada Inc.

Counsel

P. DeMelo and R. Kehar

I. Andres
R. Houser (absent)

OMERS Realty Management Corp. and Square One Property Corp.	M. Noskiewicz
1077022 Ontario Inc., Touchstone Construction Ltd., and Jason Properties Inc.	M. Di Vona J. Alati (absent)
Kerava Grove Estates	M. Foderick J. Dawson (absent)
Amacon Development (City Centre) Inc.	S. Rosenthal
Morguard Investments Ltd.	J. Shapira D. Wood (absent)

**MEMORANDUM OF ORAL DECISION DELIVERED BY JAMES R. McKENZIE
ON JULY 27, 2016 AND ORDER OF THE BOARD**

[1] This decision follows a prehearing conference (“PHC”) convened to update the Board with regard to the status of appeals filed against City of Mississauga (“City”) Official Plan Amendment No. 8 (“OPA 8”) and to deal a motion by the City for a partial approval of OPA 8 to implement a settlement for part of the appeal by Baif Developments Inc. (“Baif”) concerning its property known municipally as 180 and 190 Webb Avenue.

[2] When initially scheduled, the PHC was to include the appeal of OPA 8 by the group known collectively as the Quick Service Restaurants—A & W Food Services of Canada Inc., McDonald’s Restaurants of Canada Ltd., The TDL Group Corp., Wendy’s Restaurants of Canada, and the Ontario Restaurant Hotel and Motel Association — which had been consolidated with the same group’s appeal of the City’s new Official Plan (PL111148) in an earlier decision of the Board, differently constituted. Subsequent to notice being given for this PHC, the Quick Service Restaurants withdrew their appeal of each planning instrument, leaving only the OPA 8 matter before the Board in this proceeding.

STATUS OF OPA 8 APPEALS

[3] Concerning the status of the remaining appeals of OPA 8, Paul DeMelo, counsel for the City, reported that the City is continuing to explore settlements with the various appellants. The City anticipates several of those negotiations to come to fruition over the balance of the summer and fall, and Mr. DeMelo requested a further PHC in November to provide further updates and to deal with necessary motions for partial approval to give effect to any settlements.

[4] A further PHC is scheduled for Tuesday, November 15, 2016 10 a. m. at:

**City Hall
Municipal Hearing Room
300 City Centre Drive
Mississauga, ON L5B 3C1**

[5] The City is directed to secure a suitable venue for that PHC and to provide notice of any motions for partial approval.

THE BAIF APPEAL RE: 180 AND 190 WEBB AVENUE

[6] The City brings a motion seeking an order of the Board modifying OPA 8 with respect to lands owned by Baif, known municipally as 180 and 190 Webb Drive (“subject lands”), and approving OPA 8 as modified only as it applies to the subject lands. The motion is uncontested; it is supported by Baif.

[7] By way of background, in April 2012, Baif submitted applications for an official plan amendment and a zoning by-law amendment to permit high-density residential development on the subject lands. Notes the City, the applications went through the full public process and were subsequently revised in response to feedback received from local residents, City staff, and other agencies and stakeholders. On May 25, 2015, Baif submitted a revised set of plans and updated studies for a revised development scheme consisting of a 25-storey, 301-unit residential apartment building and a three-storey, 31-

unit townhouse building to provide for transition in built-form to the existing low-rise residential neighbourhood south of the subject property.

[8] On March 6, 2013, the City adopted OPA 8. The subject lands are within the area regulated by OPA 8. In April, 2013, Baif appealed OPA 8 as it applies to both the subject lands and an adjacent property it owns known municipally as 194 Burnhamthorpe Road West.

[9] Upon approval, OPA 8 will repeal the City's existing Downtown Core Local Area Plan and replace it with a new Downtown Core Local Area Plan.

[10] The Board understands that as settlement discussions unfolded, a determination was made to deal with the Baif official plan amendment application as a modification to OPA 8. Both the City and Baif shared a concern that an amendment to the existing Downtown Core Local Area Plan policies to permit Baif's revised scheme could be overridden by an approval of OPA 8.

[11] On October 5, 2015, the City's Planning and Development Committee recommended that City Council approve in principle Baif's revised development scheme. On October 14, 2015, Council adopted that recommendation. Both the City and Baif now seek to implement Council's resolution through a modification to OPA 8.

[12] Michael Hynes is a Registered Professional Planner, employed as a Planner in the City's Planning and Building Department. His affidavit supports the City's motion.

[13] The subject property is designated "Residential High Density." The proposed modification to OPA 8 adds a special site policy to permit townhouses (horizontal multiple dwellings).

[14] It is Mr. Hynes's planning opinion that the proposed special policy is consistent with the Provincial Policy Statement ("PPS") and conforms to the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). The subject property is situated in

Downtown Mississauga, an area identified as an Urban Growth Centre and planned to accommodate and support major transit infrastructure and population growth.

[15] It is also Mr. Hynes's planning opinion that the proposed modification conforms to the City's Official Plan. It satisfies the criteria used to evaluate official plan amendments and is consistent with the Plan's overall intent, goals, and objectives to locate higher density in the Downtown Core and to provide an appropriate transition between high density residential development and lower density residential neighbourhoods.

[16] The Board accepts Mr. Hynes's uncontradicted professional planning opinions and relies on those opinions to find that the proposed modification represents good planning and to allow the motion.

ORDER

[17] The motion is allowed. Official Plan Amendment No. 8, as set out in Exhibit C to the affidavit of Michael Hynes, dated July 5, 2016 (Tab 2 of Exhibit 4 in PL130350), is modified in a manner consistent with the amendment set out in Exhibit H of the same affidavit. As so modified, Official Plan Amendment No. 8 is partially approved and in full force and effect only as it applies to the subject lands, 180 and 190 Webb Avenue, as shown on Exhibit H to Mr. Hynes's Affidavit.

[18] Finally, the Board acknowledges paragraphs 13 and 14 of the motion record, wherein the City and Baif agree that the modification to OPA 8 and the partial approval of OPA 8 as it applies the subject lands are without prejudice to the remaining appeals before the Board relating to OPA 8, including the unresolved portion of the Baif appeal (194 Burnhamthorpe Road West) and all other outstanding appeals of OPA 8 and its implementing zoning by-law, By-law No. 0050-2013, and shall not in any way predetermine the outcome of any of those appeals; and wherein the City and Baif agree that the modification to OPA 8 and the partial approval of OPA 8 relate only to the subject lands, and are without prejudice to and shall not have the effect of limiting the rights of any party to seek — or the jurisdiction of the Board to consider and approve —

modifications, deletions, or additions to the unapproved maps, policies, figures, definitions, graphics and associated preambles, and schedules in OPA 8 and the unapproved sections, definitions, figures, maps, and schedules of By-law No. 0050-2013 on a general, area-specific, or site-specific basis as the case may be.

[19] Board Rule 107 states:

- 107. Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

[20] Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

“James R. McKenzie”

JAMES R. McKENZIE
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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